Filed 4/25/06 In re Arturo C. CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ARTURO C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ARTURO C., Defendant and Appellant.	G035462 (Super. Ct. No. DL015116) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Joy W. Markman, Judge. Affirmed.

Linn Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons and Jeffrey J. Koch, Assistant Attorneys General, and Robert M. Foster, Deputy Attorney General, for Plaintiff and Respondent.

This is a simple case, made complicated only by the fervor and tenacity of the appellate advocacy on behalf of appellant. Despite the commendable zeal of appellate counsel, we find the evidence in this case sufficient to support the juvenile court's determination minor possessed live ammunition in violation of section 12101, subdivision (b)(1) of the Penal Code.

* * *

Arturo Christopher C. (Minor) was arrested on a warrant. He first denied his identity, but a search of his pockets turned up his wallet and his school identification, putting the lie to his denial. He was patted down for weapons, handcuffed, placed in the rear seat of a police car, and transported to the La Habra City Jail. Upon his arrival a live .223 Winchester rifle cartridge, three inches in length, was found on the driver's side rear floor of the police car. One of the arresting officers testified the car had been searched at the beginning of the shift and had no bullet in it at that time. He said no one else was in the car between the time he searched it and the time the Winchester cartridge was found except his partner. Minor denied ever possessing the bullet, which fit none of the police weapons in the car. That is the sum and substance of the case.

And it is not much. As the trial judge noted, the bullet should have been found during the pat-down of Minor, or it should have been found during the initial search of the police car, depending upon whose version of the facts she believed. Either way, the police missed something they should have found.

But the trial judge reasoned that it was more likely the police missed the bullet in a superficial pat-down for weapons of a boy in baggy clothes who was already handcuffed than it was that they missed it sitting in the police car before the arrest. We are inclined to agree. On the facts of this case, it was so much more likely as to constitute proof beyond a reasonable doubt.

As appellant concedes, "Our role in considering an insufficiency of the evidence claim is quite limited. We do not reassess the credibility of witnesses (*People v.*

Barnes (1986) 42 Cal.3d 284, 303-304), and we review the record in the light most favorable to the judgment (*People v. Johnson* (1980) 26 Cal.3d 557, 576), drawing all inferences from the evidence which supports the jury's verdict. (*People v. Alcala* (1984) 36 Cal.3d 604, 623.) By this process we endeavor to determine whether '"any rational trier of fact"' could have been persuaded of the defendant's guilt. (*People v. Johnson, supra*, at p. 576, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 319.)" (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1382.) We conclude a rational trier of fact could reach the decision the trial judge reached.

The testimony here was that the La Habra Police Department has a policy of checking cars for contraband before and after going on a call. The police officer in this case testified this was his first call of the shift, and that before starting, he spent five minutes thoroughly searching the police car – going so far as to remove the rear seat.

For Minor's version of the facts to be correct, the bullet would have to have been missed twice: First when the car was searched after the arrest of the person who actually possessed the bullet, and then by the officer who arrested Minor when he searched it at the start of his shift. We find ourselves in agreement with the trial court that it is so much more likely a police officer missed it when he patted down the baggy clothing of a harmless juvenile than it is that two different searches failed to turn it up and Minor just happened to be in the car when the bullet suddenly appeared, that it rises to the level of proof beyond a reasonable doubt.

This is not, as Minor contends, "a finding based mainly on 'speculation,' 'conjecture,' 'unwarranted inference,' or 'mere suspicion.'" It is a finding based upon logic and experience. Logic tells us if something was not there when the minor was put into the back seat and was there when he was taken out, he was the source of the object. Experience tells us it is vastly more likely that the police officers would have missed something in a search for identification and a pat-down of the minor than during two separate searches of an enclosed space.

The first search of the Minor was for identification. And, of course, it stopped when identification was found. The reason things are always in "the last place we look" is that we stop looking when we find them. That is what happened here, and it is misleading to suggest that a full search was conducted.

Nor was the pat-down a full search. Pat-downs are, by definition, cursory. The officers testified they conducted a thorough pat-down here, but the concept of a thorough pat-down is very much like the concept of a jumbo shrimp: While not strictly oxymoronic, the adjective is limited by the noun it defines. Even a "thorough" pat-down is something less than a complete search.

Furthermore, they are more or less cursory depending upon who is being searched: A pat-down of a suspect in an armed liquor store hold-up would, of course, be much more careful than the pat-down of a 16-year-old boy for a probation violation that consisted of failing to report to his probation officer, failing to attend classes, and staying away from home overnight without his mother's permission.[1]

This might explain why these officers checked Minor's pockets but not his shoes. These considerations, combined with the fact he was wearing baggy clothing, leaning forward in the backseat of the police car and the arresting officer could not see his hands or feet during the time he was being transported, make it much more likely the officer missed the bullet before putting the minor in the car than it was that he missed it during a five-minute search of the patrol car (and that another officer missed it earlier in *his* search of the car).

The trial court was convinced by these facts beyond a reasonable doubt. We see nothing questionable about that conclusion. The judgment is affirmed.

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[1] In fact, petitions had previously been sustained against Minor for disturbing the peace, robbery with a BB gun, possession of stolen property and brandishing an *imitation* firearm (Pen. Code, § 417.4, which Minor's counsel mistakenly characterizes as "brandishing a firearm"). But none of this is reflected in the warrant the officers were actually operating under.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O’LEARY, J.

IKOLA, J.